

## SEPARATE TRIAL APPLICATIONS

### RECENT FIRST INSTANCE DECISIONS

NSW	SA	VIC
<p><i>R v McKellar &amp; ors</i> (No 1), NSWSC unreported, decision delivered 11/3/14</p> <p><b>Application refused</b></p> <p>McKellar (the Applicant) and his three co-accused were jointly charged with murder, wounding with intent to cause GBH, and armed assault with intent to rob. Whereas the Applicant’s co-accused sought to raise prior good character in the trial, the Applicant did not due to his previous criminal convictions. Further, the Applicant anticipated that his co-accused would introduce evidence unfairly prejudicial to him, though inadmissible in respect to his case.</p>	<p><i>R v Scardigno &amp; Anor</i> [2014] SADC 169</p> <p><b>Application partly granted</b></p> <p>The three co-accused were jointly charged with a series of offences relating to the trafficking and distribution of 40kg of Cannabis. Whilst the charges against all co-accused arose out of a shared sequence of events, those brought against Stratis (the Applicant) did not relate to the drug charges but, rather, firearm possession.</p>	<p><i>R v Spence &amp; Mitchell</i> (No. 1) [2014] VSC 557</p> <p><b>Application granted</b></p> <p>Spence (the Applicant) and Mitchell were jointly charged with the murder of Nhan Ngoc Doan. In his initial interview with the police, the Applicant made “no comment” responses to questioning. Similarly, when interviewed by police, Mitchell also made “no comment” responses or denials. However, Mitchell subsequently made admissions as to his involvement in the offence, but asserted that he had been acting under duress from Spence.</p>
<p><i>R v Rawlinson; R v Proud; R v Spicer</i> [2014] NSWSC 355</p> <p><b>Application granted</b></p> <p>The four co-accused were jointly tried with the murder of the deceased. Whilst Spicer (the Applicant) himself was accused of having set fire to the home in which the deceased resided, Rawlinson and Proud were alleged to be liable via joint criminal enterprise. Proud was the only accused</p>	<p><i>R v Singh &amp; Bachra</i> (No 1) [2010] SADC 129</p> <p><b>Application refused</b></p> <p>Singh (the Applicant) and Bachra were jointly charged with offences related to a robbery that occurred in 2006. In addition to the charges surrounding the robbery and threats made against the complainant, Bachra was further charged, on the same information [re: indictment], with one who elected to give evidence, and did so in the final days of the trial.count of aggravated assault</p>	<p><i>R v Croxford &amp; Doubleday</i> [2009] VSC 517</p> <p><b>Application refused</b></p> <p>Croxford, Doubleday (the Applicant) and another were jointly charged with murder. In portions interviews with police, Croxford made statements that were inadmissible in the case against the Applicant, but tended to undermine the Applicant’s argument of self-defence. These portions were subsequently excluded as their prejudicial effects outweighed their probative</p>

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	and four counts of blackmail.	value.
<p><i>R v Lockett</i> [2013] NSWSC 859</p> <p><b>Application granted</b></p> <p>The four co-accused were charged with murder. After arriving at the house of the deceased, they proceeded to threaten him. The Crown case was that at one point, Lockett (the Applicant) struck the deceased on the head with a gun, which then discharged, causing a fatal wound. Accounts differed as to what Lockett was seen holding in his hands.</p>	<p><i>R v Collie &amp; Anor</i> [2006] SASC 4</p> <p><b>Application granted</b></p> <p>The two co-accused (Samantha Collie and Gary Collie – each Applicants) were jointly charged with two murders. The Crown case against each relied on significantly different bodies of evidence, with the case against Samantha Collie being that of her involvement as an accessory, albeit as part of a joint enterprise with Gary Collie.</p>	<p><i>DPP v Ho &amp; Ors</i> (No.1) [2008] VSC 610</p> <p><b>Application granted for some accused on some of the counts; refused for others on other counts.</b></p> <p>Each of the six co-accused were charged with a series of Commonwealth offences relating to one holistic enterprise involving the trafficking of slaves. The nature and ambit of the charges brought against each of the accused varied significantly with regards to the evidence relied upon by the Crown.</p>
<p><i>R v White &amp; Others</i> (No .1) [2012] NSWSC 465</p> <p><b>Application refused</b></p> <p>White (the Applicant) was charged with the murder of Saaid Zaiter in 2008, whilst his two co-accused were charged with being accessories after the fact. The Crown relied on communications between the parties, and various other post-offence conduct of the co-accused to support its case.</p>	<p><i>R v Pugh, Cullen &amp; Ostermann</i> [2006] SADC 24</p> <p><b>Application granted</b></p> <p>The four co-accused were jointly charged with a series of offences relating to the manufacture and possession of methylamphetamine. Following the rejection of key pieces of evidence that was to be led against Pugh (the Applicant), the remaining evidence against him was extraordinarily weak in comparison to the Crown case against his co-accused.</p>	<p><i>R v Cox &amp; Ors</i> (No.4) [2005] VSC 255</p> <p><b>Application granted</b></p> <p>Four co-accused were charged with seven offences relating to conspiracy to trafficheroin and money laundering. As against each co-accused, some of whom were former Victorian police officers, the evidence in the Crown case varied substantially in weight and scope.</p>

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<p><i>R v Hazairin Iskandar; R v Andrew Iskandar &amp; R v Nita Iskandar</i> [2011] NSWSC 1192</p> <p><b>Application granted</b></p> <p>Hazairin Iskandar (the Applicant) and Andrew Iskandar were jointly indicted for the murder of Mohd Shah Saemin on 21 February 2010 at Leichhardt. Nita Iskandar was charged with, knowing Andrew Iskander committed the homicide, that she received, harboured, maintained and assisted him in the following weeks. Admissions made by his co-accused contained material implicating the applicant, though inadmissible in the case against him.</p>	<p><i>R v Tracey &amp; Ors (No.1)</i> [2005] SASC 355</p> <p><b>Application granted</b></p> <p>Six co-accused (each Applicants) were jointly charged on the same information [re: indictment], with two separate offences stemming from the same body of evidence. Specifically, whilst Tracey and two co-accused were charged with the murder, the other three co-accused were charged with impeding police investigations and providing false information.</p>	<p><i>R v Iaria and Panozza</i> [2004] VSC 110</p> <p><b>Application refused</b></p> <p>Panozza (the Applicant) and Iaria were jointly charged with murder. The applicant anticipated that his co-accused would elicit evidence of his bad character that was inadmissible in the case against him. Similarly, a number of out-of-court statements made by Iaria were to be tendered by the Crown that were highly prejudicial to the applicant but inadmissible against him.</p>
<p><i>R v Hawi &amp; ors (No 3)</i> [2011] NSWDC 1649</p> <p><b>Application refused</b></p> <p>The murder, riot, and affray offences for which the co-accused were charged related to the Sydney Domestic Airport Terminal brawl between members of the Hells Angels and Comancheros motorcycle clubs in 2009. Padovan (the applicant) was a member of the Hells Angels, whilst his six co-accused were members of the Comancheros.</p>	<p><i>R v Clothier &amp; Williams</i> [2001] SASC 130</p> <p><b>Application granted</b></p> <p>Clothier (the Applicant) was charged with the murder of Shane Mueller in 2000, whilst Williams was charged with assisting the Applicant after the fact. The two separate charges were presented on the same information [re: indictment]. Although the same sequence of events gave rise to both charges, the Crown's case against each was substantially different and relied on different sources of evidence.</p>	<p><i>R v Gardner and Coates (No. 3)</i> [2003] VSC 154</p> <p><b>Application refused</b></p> <p>Gardner and Coates (each Applicants) were jointly charged with motor vehicle theft, armed robbery, attempts to kill, and reckless endangerment. The applicants each sought to contest different aspects of the Crown case against them, with Coates pleading not guilty to all charges and Gardner conceding to the charges of theft and armed robbery.</p>
<p><i>R v McParland; R v Wingate (No 2)</i> [2011] NSWDC 265</p> <p><b>Application refused</b></p>		

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<p>McParland and Wingate (the Applicant) were jointly charged with aggravated break and enter and commit a serious indictable offence in company. When interviewed by the police following the offence, they each gave an account for their presence at the scene, which were inconsistent with one another.</p>		
<p><i>R v Singh</i>, NSWSC unreported, 10/11/2011</p> <p><b>Application granted</b></p> <p>The three co-accused were jointly charge with the murder of Ranjodh Singh in 2009. Harpreet Singh (the applicant). The Crown case against the applicant was entirely circumstantial, whilst against his co-accused the Crown sought to lead additional evidence of admissions made to another witness. The co-accused also indicated an intention to rely on duress and to tender evidence of the applicant's prior violent behaviour.</p>		